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SUBJECT: SPAIN: INTERNET PIRACY UPDATE

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#### SUMMARY

¶1. (SBU) Secretary of State for Telecommunications and the Information Society Francisco Ros told Econoffs at an October 6 AmCham breakfast that "within a matter of days," the GOS will announce a series of measures designed to tackle Internet piracy. The President of the Coalition of Creators and Content Industries reported separately that the Coalition may reach a "de minimis" agreement with the association of Internet Service Providers (Redtel) in the next week or two, leading to a government initiative. In his formal remarks at the breakfast, Ros briefly addressed IPR issues, characterizing the assertion by copyright-dependent industries that Spain has one of the highest Internet piracy rates in the world as an "urban legend." USG officials and U.S.-based industry representatives will have an opportunity during Ros's October 19-22 visit to Washington to challenge this view. End Summary.

¶2. (U) On October 6, State Secretary (Under Secretary equivalent) Francisco Ros addressed an audience of about 80 at an AmCham-hosted breakfast, speaking on "The Development of the Information Society in Boosting U.S.-Spain relations." Following that event, he met with the AmCham's Intellectual Property Committee, composed of representatives of the software, film, music, and video games industries.

#### A DEAL IMMINENT?

¶3. (SBU) In a conversation with Econoffs before the event began, State Secretary Ros, who is scheduled to visit Washington November 19-22, said that the government will announce a new initiative related to IPR protection and Internet piracy "in a matter of days." Econoffs later spoke to Aldo Olcese, President of the Coalition of Creators and Content Providers, who confirmed that the government was putting considerable pressure on Redtel, the ISP association, to agree to what Olcese characterized as a "de minimis" anti-piracy agreement. The Coalition is not enthusiastic about the proposed agreement but intends to accept it as a way to get the government more actively engaged in finding and implementing solutions. Olcese estimated that the first part of the agreement, establishing a government authority that would take action against a number of high-profile websites known to make pirated content available, could be ready by the end of this week. The second part, on making legal content available online, could, if accepted by Redtel, be ready by October 16, he said.

## REMARKS

14. (U) In his formal remarks, State Secretary Ros provided statistics on the impressive growth in Internet penetration in Spain and as well as the strong performance of the IT sector in the face of the economic downturn. A major focus of his remarks was promotion of the 3rd International Forum on Digital Content (FICOD 2009) to be held in Madrid, November 17-19. The GOS has invited the U.S. to participate in FICOD as the featured country ("invitado de honor") and is seeking USG and private-sector participation.

15. (U) Towards the end of his speech, Ros turned briefly to IPR issues, commenting that "there are no objective data provided by any entity that shows that Spain has more Internet piracy than its neighboring countries." He characterized assertions by industry that Spain has one of the highest Internet piracy rates in the world as an "urban legend." He referred to Eurostat figures that he said show that Spanish youth share files at about the same volume as their peers in the UK, France, and Germany. Nevertheless, he said, Spain takes IPR protection seriously and is among the first countries to promote collaborative international actions to combat the phenomenon. Ros argued that no country can solve the piracy problem on its own and that a global approach is needed. Spain hopes to develop such an approach during its January-June 2010 Presidency of the European Union. Meanwhile, he stressed that "putting into place measures that don't work" only serves to create false expectations that lead to disappointment and frustration.

## METING WITH AMCHAM IP COMMITTEE

16. (U) In his subsequent meeting with the AmCham's Intellectual Property committee, Ros returned to these

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themes, averring that Spain's "bad reputation" for piracy predates the era of illicit downloads and file-sharing, and derives from the street piracy practice known as "top manta," in which infringing goods are sold at informal street markets, and hidden under blankets when police appear. (Note: "Top manta" is still widespread in Spain, but police have been increasingly effective in combating it in recent years, though there have been calls to decriminalize the practice since it is allegedly practiced by impoverished immigrants. End Note.) He insisted that the practices and habits of Spanish Internet users are no different than those of people in other, similar countries. In this context, he insinuated that Spain's placement on the Special 301 Watch List in 2008 and 2009 was arbitrary and unfair.

17. (U) Ros said any attempt to reduce online piracy should have three components: repression, education, and the exploitation of new models to make content legally available online. He added that the Spanish government is seeking ways, under existing authority, to pursue and take out of commission some 100 websites that are responsible for perhaps as much as 80 percent of infringing content. Defending the Spanish government's IPR performance, he cited figures showing the number of cases of Internet piracy pursued by police and prosecutors over the past four years, even while recognizing that many judges in Spain are not well equipped to understand or dispose correctly of intellectual property cases. Ros also mentioned public education campaigns Spain has undertaking, while noting that content providers needed to offer an alternative to illegal downloading and file-sharing, using new forms of distribution to make quality products available on the Internet at attractive prices.

18. (U) Ros told the rights-holders' representatives that "very soon," Spain's Council of Ministers will receive for its approval a proposal for regulatory reform to address digital piracy. While not ruling out new legislation to strengthen the government's authority, Ros lamented that getting a law through Congress could take years and would

likely arouse bitter opposition.

¶9. (U) AmCham President Jaime Malet and various of those present told State Secretary Ros that the important point was not whether piracy in Spain was worse than in other countries, but rather that it was clearly bad enough to merit and require forceful government action. In order for content providers to invest more in the Spanish market, there needs to be an adequate legal and regulatory framework to support quality content and make possible a decent return on investment. The film and music industries have seen marked declines in sales over the past several years, attributable to the growth of Internet piracy. Ros claimed that Spain's legal and regulatory framework was on a par with those of France, Germany, and the UK.

#### COMMENT

¶10. (SBU) While not challenging to his face Ros's assertions that industry has wrongly stigmatized Spain, a number of industry representatives present were clearly incensed with his "urban legend" remark and the argument behind it. A representative of a local Disney affiliate told Econoff afterwards that his company take serious issue with Ros's claim that there are no objective data showing Spain's piracy problem to be worse than other countries'. Aldo Olcese cited the attitude behind Ros's assertions as illustrative of the difficulties the Coalition has encountered in trying to get the government to act more vigorously against Internet piracy. During his visit to Washington, Ros will meet with the International Intellectual Property Alliance (IIPA) and the Motion Picture Association of America (MPAA), among others. These groups will no doubt challenge his denigration of their data and his complacent assessment of Spain's Internet piracy situation and legal regime. USTR will also have the opportunity to help him understand why Spain is on the Watch List and what it must do to get off it. The news from both Olcese and Ros that an agreement and a government initiative are close to fruition is certainly welcome, and such an agreement, however modest, would be an important step in the right direction.. End Comment.

CHACON